In the High Court of Judicature for Rajasthan Jaipur Bench

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Cr. Misc. Petition No.608/1998
Santosh K.Saini ***Versus*** State

Date of Order ::: 07/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. RK Mathur, for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Instant petition U/s 482, CrPC is directed against order dt.17/03/98 whereby ACJM Behror (Alwar) rejected application of petitioner U/s 197, CrPC in Cr. Case No.28/87.

Facts necessary for adjudication, in short, are that indisputably petitioner was working as Junior Engineer on deputation in Alwar Co-operative Land Development Bank Ltd.(**"the Bank"**). A written report was lodged by the Bank on 05/10/85 at PS Behror against accused including petitioner with regard to commission of embezzlement by officials of the Bank with the connivance of other accused. Investigation was made by Deputy Supdt. Of Police (ACD) in course whereof, it was revealed that though loans were shown to have been sanctioned in fictitious names for installation of boring wells alongwith diesel motor pump sets which in fact were not found at

the place of installation whereof shown in loan documents, for which physical verification was got done and made by petitioner herein.

In all seven cases, false verification of installation of boring wells alongwith diesel motor pump sets were found at the instance of petitioner and particularly of Birbal S/o Bhura Gujar R/o Babera in whose case, application was allegedly submitted for installation of boring well alongwith diesel motor pump set at Khasra No.970 dt.30/07/80 and for which papers were prepared and loan was sanctioned of Rs.8,000/- on the basis of physical verification report made by instant petitioner, while during investigation it was revealed that applicant has neither applied for any loan nor there was any boring well duly installed with diesel motor pump set at his field at any point of time.

On said report, criminal case under FIR No.195/85 was registered at PS Behror for offences U/Ss 420, 467, 468, and 120-B IPC. After investigation, police submitted challan – upon consideration whereof, vide order dt.17/01/87 Magistrate took cognizance of offences against the petitioner alongwith other co-accused and framed charge U/Ss 402, 467, 471/120-B, IPC to

which accused denied and claimed to be tried.

An application was filed by petitioner U/s 197, CrPC on the premise that he being public servant, his act alleged of physical verification was in discharge of official duties – in this view whereof, for his criminal prosecution, prior sanction as provided U/s 197, CrPC was required to be obtained from competent authority before filing of charge sheet and taking cognizance of offence, which is completely missing in his case - in absence whereof, his criminal prosecution in instant case is bad in law. His application U/s 197, CrPC was dismissed by trial Magistrate vide order dt.17/03/98. Hence this petition.

Counsel for petitioner submits that petitioner is a public servant working as Junior Engineer in State Government and verified installation of boring wells with diesel motor pump sets at the sites which was part of his duty and was not at all concerned with procedure adopted by other co-accused engaged in sanction of loan, if any and his act being confined only to verification was in discharge of his official duty as public servant of the Bank and as such without prior sanction of competent authority,

order of framing charges against him is unwarranted and deserves to be set aside.

Counsel further submits that even from a bare perusal of charge sheet, itself, material having come in course of investigation does not disclose in any manner commission of act of misconduct, which may constitute criminal offence and that apart, the learned Magistrate has failed to comply with requirement as provided U/s 211 CrPC which casts obligation upon him to frame specific charge pointing out commission of offence which in instant case is completely missing.

Per contra, Public Prosecutor supported order impugned passed by learned Magistrate framing charge and submits that instant petition is misconceived and deserves to be dismissed because of the reason that more than 11 years have rolled by and application U/s 197, CrPC having been filed belatedly, therefore, is not maintainable and has rightly been dismissed by learned Magistrate under order impugned.

I have considered contentions of Counsel for both the parties. As regards merits of allegations imputed against petitioner, with the assistance of Counsel for parties, this Court has

examined and gone through material on record including charge sheet & documents accompanying thereto, besides complaint – on a perusal whereof it depicts that petitioner has been charged of his involvement in criminal conspiracy and allegation imputed qua him is with regard to physical verification made by him. Charges framed against him certainly shows prima facie material of being involved in criminal conspiracy, albeit it is subject to final trial of his charges and this Court does not find any error in the order of framing charges against him.

Of course, prior sanction of competent authority is requirement under law if allegations are made of commission of offence against a public servant in discharge of his official duty. Scope and requirement U/s 197, CrPC has been considered by Apex Court in details in recent judgment in **Romesh Lal Jain Vs. Naginder Singh Rana (2006(1) SCC 294)** ad infra -

> **"33**. The upshot of the afore mentioned discussions is that whereas an order of sanction in terms of Section 197, CrPC is required to be obtained when the offence complained against the

> public servant is attributable to discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained has nothing to do with the same.A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined."

It is true that question as to whether sanction was required to be obtained or not, can be considered at a later stage in course of trial when it became possible to be determined after some witnesses are examined but each case has to be considered on its own facts. In order to prima facie find out as to whether act or omission of the accused has a reasonable connection with

discharge of his official duty, and if it so, it must be held to be official duty with a view to protect public servant under Code of Criminal Procedure. But, it is not a duty of public servant while in discharge of official duty to enter into criminal conspiracy or indulged in criminal misconduct and in such like cases, want of sanction U/s 197, CrPC is, therefore, not bar.

In instant case, petitioner was working as Junior Engineer and was supposed to report after physical verification about installation of boring well with diesel motor pump set whereon but material has come on record on the basis whereof he has been charged of criminal conspiracy by imputing allegations of loan having neither been sanction in the names of applicants nor there was any boring well or diesel motor pump set being installed at the site while physical verification whereof has been made by petitioner. This act of petitioner as alleged, for which charges have been framed against him, in the opinion of this Court cannot be said to be an act in discharge of his official duty; as such S.197 CrPC could not be said to be attracted in the facts of instant case.

Consequently, misc. petition fails and is hereby dismissed alongwith stay petition No. 426/98. Record be sent back, directing trial Magistrate to expedite trial, itself, keeping in view pendency of criminal case for last about 20 years.

(**Ajay Rastogi), J.**

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